

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.7629 of 2018

Order: (per V.Ramasubramanian, J.)

The petitioner has come up with the above writ petition challenging an order of attachment passed by the Recovery Officer of the Debts Recovery Tribunal under Rule 48 of the Second Schedule to the Income Tax Act, 1961.

2. Heard Mr. R.Siva Sai Swarup, learned counsel for the petitioner and Mr. B.S. Prasad, learned Standing Counsel for the 2nd respondent/Bank.

3. Admittedly, the Bank filed a suit in O.S.No.92 of 2000 on the file of the XIV Additional Chief Judge, City Civil Court, Hyderabad, against the borrower/Company, which is the 5th respondent herein as well as four individuals. The petitioner herein was cited as the 3rd defendant in the suit. The suit was for recovery of money and the enforcement of the mortgage deed. The Civil Court passed a preliminary decree on 30-6-2003. The Civil Court granted three months' time for redemption.

4. Thereafter, the Bank filed O.A.No.4 of 2004 under Section 19 of Act 51/1993 for the issuance of a certificate of recovery. The Tribunal passed an order dated 24-9-2004 directing the issue of a certificate of recovery, holding the Company as well as three individuals jointly and severally liable to pay the amount. Unfortunately, the petitioner was

one among those three individuals on whom a joint and several liability was fastened by the Debts Recovery Tribunal. This order was passed *ex parte* and the petitioner does not appear to have taken any further steps.

5. The Bank appears to have filed a petition before the Recovery Officer in which the Recovery Officer ordered the attachment of the property of the petitioner, on 05-12-2017. Contending that a decree passed in 2004 is sought to be enforced in the year 2017, the petitioner came up with the above writ petition. Shocked at such a 13 year-gap, this Court granted an interim order of suspension at the stage of admission.

6. But after the shock subsided, it was found that what was numbered in 2017 was what was filed in 2004 and given an earlier number. In other words, the impugned order shows that the same was passed in R.P.No.1381/2017 (but it is indicated that it was old R.P.No.216/2004).

7. We do not know whether the Bank slept over for a period of 13 years or it was the Debt Recovery Tribunal's turn.

8. In any case, as against the impugned order of attachment passed under Rule 48, the petitioner has two remedies before the very same Tribunal. He can file an application before the Recovery Officer and if it is decided against the petitioner, he can file an appeal before the Tribunal itself for having this order of attachment set aside.

Since serious questions are raised by the petitioner, it is better that the Debts Recovery Tribunal adjudicates upon these questions. Therefore, the writ petition is dismissed. The interlocutory applications, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

30th April, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.7629 of 2018
[per VRS, J.]



30th April, 2018.
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